CRIMINAL MISCELLANIOUS NO. 11341 OF 2001
WITH
CRIMINAL WRIT JURISDICTION CASE NO. 204 OF 2001

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(In the matter of an application under Section 482 of the Code of Criminal Procedure, 1973 and in the matter of an application under Article 226 of the Constitution of India)

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1. NAGENDRA PRASAD, SON OF SHRI SUKHDEO PRASAD @ SUKHDEO SAH
2. DILIP KUMAR, SON OF LATE RAM SUDIST RAI
BOTH RESIDENT OF MOHALLA RAJOPATTI, POLICE STATION AND DISTRICT SITAMARHI
.....***PETITIONER (IN CR. MISC. 11341/01)***

VERSUS

1. THE STATE OF BIHAR
2. MAHANTHA SAH, SON OF LATE BHIKHARI SAH
3. RAM SAKHI DEVI, WIFE OF SHRI MAHANTH SAH
4. RAM KAILASH RAI, SON OF SHRI DHANI RAM RAI
5. SANJAY KUMAR, SON OF SHRI RAJESHWAR SAH
6. BAL NARAYAN SINGH, SON OF SHRI BHIKARI SINGH
2 TO 6 ARE RESIDENT OF MOHALLA RAJOPATTI, POLICE STATION AND DISTRICT SITAMARHI
.....***OPPOSITE PARTIES (IN CR. MISC. 11341/01)***

WITH

MAHANTH PRASAD @ MAHANTH SAH, SON OF LATE BHIKHARI SAO, RESIDENT OF MOHALLA RAJOPATTI, POLICE STATION SITAMARHI (MEHSAUL O.P.), DISTRICT SITAMARHI .....***PETITIONER (IN CR.W.J.C. 204/01)***

VERSUS

1. THE STATE OF BIHAR
2. THE HOME COMMISSIONER, GOVERNMENT OF BIHAR, PATNA
3. THE DISTRICT MAGISTRATE, SITAMARHI
4. THE SUPERINTENDENT OF POLICE, SAMASTIPUR
5. THE SUB DIVISIONAL MAGISTRATE, SITAMARHI SADAR
6. THE SUB DIVISIONAL POLICE OFFICER, SITAMARHI SADAR
7. THE CIRCLE OFFICER, DUMRA, SITAMARHI
8. THE OFFICER-IN-CHARGE, SITAMARHI POLICE STATION (MEHSAUL O.P.), DISTRICT SITAMARHI
9. DILIP KUMAR, SON OF LATE RAM SUDHIST RAI, RESIDENT OF MOHALLA RAJOPATTI, POLICE STATION AND DISTRICT SITAMARHI

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.....***RESPONDENTS (IN CR.W.J.C. 204/01)***

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FOR THE PETITIONER :- MS. SUSMITA MISHRA, ADVOCATE
(IN CR.W.J.C. 204/01)
FOR THE O.P. :- MS. SUSMITA MISHRA, ADVOCATE
(IN CR.MISC. 11341/01)

FOR THE S T A T E :- MR. PARMESHWAR MEHTA, A.P.P.
(IN BOTH THE CASES)

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P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

O R D E R

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Sheema Ali Khan, J. **1.** Heard Counsel for the parties.

2. Cr. Misc. No. 11341 of 2001 has been filed challenging the orders dated 29.12.2000 passed by the Sub Divisional Officer, Sitamarhi Sadar in Case No. P 776/ 2000 in an application filed under Section 147 of the Code of Criminal Procedure and the order dated 27.02.2001 passed by the Sessions Judge, Sitamarhi in Criminal Revision No. 10 of 2001. Cr.W.J.C. No. 204 of 2001 has been filed for providing the petitioner adequate securities for construction of boundary wall etc.

3. The petitioner has filed Cri. Misc. No. 11341 of 2001 claiming that a plot of land measuring 11 ft. x 136 ft., 3½ decimals appertaining to Khata No. 46,

plot no. 888, situated in mohalla Rajopatti is being utilized by the villagers as a road. On receiving the application, the Sub Divisional Officer asked for a report from the Police Officers as envisaged under Section 147 of the Code of Criminal Procedure and also the Circle Officer, Dumra, Sitamarhi. The Officer-in-charge vide memo no. 296 dated 23.07.2000 and the Circle officer, Dumra vide letter no. 423 dated 24.07.2000 have reported that the lands in question are recorded in the name of the wife of Opposite Party No. 2, namely, Ram Sakhi Devi and are in her possession. The report also indicates that on the east side, the petitioner has assess to the main road. Similarly, it is said that there is a second road going from the house of the petitioner south of the mohalla, which is just adjacent to plot no. 887. Thus, both the authorities have reported that the petitioner has assess to the roads from two sides and, therefore, the land which has been left parti by Opposite Party No. 2 cannot be declared to be a road and the petitioner cannot be permitted to create hindrance in the peaceful possession of Opposite Party No. 2.

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4. The provision of Section 147 of the Code of Criminal Procedure provides that if the Executive Magistrate is satisfied from the report of the police officers or upon other information that there is a

likelihood of apprehension of breach of peace with respect to any right of user of the land or water, then he may require the parties concerned to file their written statements. It is argued that the procedure was not followed.

5. In the present case, on perusal of the order and the records, the Magistrate was satisfied that no grounds existed on the basis of which the petitioner could raise his claim. There should be a bonafide reason for claiming that there is a right of easement on a particular piece of plot. Merely, because a piece of land belonging to a private individual, has not been utilized by him and is lying vacant, cannot form the basis of institution of 147 proceedings or a claim of easement.

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6. In my opinion, there is no illegality in the orders of the Sub Divisional Officer or the Sessions Judge, Sitamarhi.

7. In the result, the Cr. Misc. No. 1341 of 2001 is dismissed.

8. As a consequence of the order of dismissal of Cr. Misc. No. 11341 of 2001, the petitioner of Cr.W.J.C. 204 of 2001 would be at liberty to make construction of the boundary wall or to raise any other construction on the parti land which belongs to him. Cr.W.J.C. No. 204 of 2001 is disposed of with the

aforesaid observations.

(Sheema Ali Khan, J.)

PATNA HIGH COURT
DATED, THE 29TH APRIL, 2011
N.A.F.R./ANAND

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